

**Rule 15, Ariz. R. Crim. P.**

**EVIDENCE — DISCOVERY — *BRADY* — Prosecutor's duty to disclose exculpatory evidence under *Brady* includes evidence known to police but not known to the prosecution. . . . .Revised 11/2009**

Because the defense has a due process right to a fair trial, the prosecution has an affirmative duty to disclose material exculpatory evidence to the defense. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). This includes all evidence that could be used to impeach a prosecution witness. *United States v. Bagley*, 473 U.S. 667, 666-67 (1985).

The prosecutor's obligation to disclose under Rule 15.1 extends to material and information in the possession or control of "[a]ny law enforcement agency which has participated in the investigation of the case and that is under the prosecutor's direction or control." Rule 15.1(f)(2), Ariz. R. Crim. P. The prosecutor is deemed responsible for obtaining and disclosing material and information held by state, county, and municipal law enforcement agencies that have participated in the investigation of the case. See *Carpenter v. Superior Court*, 176 Ariz. 486, 490, 862 P.2d 246, 250 (App. 1993) ("[A] law enforcement agency investigating a criminal action operates as an arm of the prosecutor for purposes of obtaining information that falls within the required disclosure provisions of Rule 15.1.").

"A prosecutor's office cannot get around *Brady* by keeping itself in ignorance or compartmentalizing information about different aspects of a case." *State v. Lukezic*, 143 Ariz. 60, 67, 691 P.2d 1088, 1095 (1984), citing *Carey v. Duckworth*, 738 F.2d 875 (7th Cir. 1984). The prosecutor is, however, not generally deemed responsible for disclosure of information and material held by federal law enforcement agencies, see *State v. Briggs*, 112 Ariz. 379, 383, 542

P.2d 804, 808 (1975), nor crime victims, see *State v. Piper*, 113 Ariz. 390, 555 P.2d 636 (1976), nor other lay witnesses, see *State v. Kevil*, 111 Ariz. 240, 527 P.2d 285 (1974). Therefore, the prosecution has an affirmative duty to confer with any law enforcement agency that has participated in the investigation of the case to insure that the State is aware of all exculpatory and impeachment evidence, so that the State may make its required disclosures under *Brady* and Rule 15.1, Ariz. R. Crim. P.